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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [Redacted]
MSC 02 205 60279

Office: LOS ANGELES

Date: **JUL 15 2009**

IN RE: Applicant:



APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director determined that the applicant was ineligible for legalization under the LIFE Act because he had been convicted of at least one felony committed in the State of California.

On appeal counsel asserts that the applicant has not been convicted of a felony or multiple misdemeanors in California that would make him ineligible for LIFE legalization.

To be eligible for adjustment to permanent resident status under the LIFE Act applicants must establish their continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988, as well as their continuous physical presence in the United States from November 6, 1986 through May 4, 1988. See section 1104(c)(2)(B)(i) and (C)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A) and (3)(A).

Aside from the continuous residence and physical presence requirements above, an alien would be ineligible for LIFE legalization if he or she has been convicted of a felony or of three or more misdemeanors committed in the United States. See section 1104(c)(2)(D)(ii) of the LIFE Act and 8 C.F.R. § 245a.18(a)(1).¹

Furthermore, section 1104(c)(2)(D)(iv) of the LIFE Act specifies that an applicant for permanent resident status must establish that he “is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.”

The applicant – who was born in Mexico on August 11, 1981 and claims to have lived in the United States since November 18, 1981 – filed an application for permanent resident status (Form I-485) under the LIFE Act on April 23, 2002. In support of his application the applicant submitted various documentary evidence – including immunization records, a school letter, a church letter, and some affidavits – of his residence and physical presence in the United States during the 1980s, in particular between 1981 and 1989.

On February 4, 2005 the applicant was interviewed at the Los Angeles District Office, and passed a test of his basic citizenship skills. The director accepted the applicant’s documentation

¹ As defined in 8 C.F.R. § 245a.1(o): “*Misdemeanor* means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p)”

As defined in 8 C.F.R. § 245a.1(p): “*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception, for purposes of 8 CFR part 245a, the crime shall be treated as a misdemeanor.”

of his residence and physical presence in the United States during the 1980s, but issued a Request for Evidence (RFE) on the day of the interview, followed by another RFE on March 8, 2005, advising the applicant to submit certified court or city attorney records showing the final disposition(s) of any and all arrest(s) in the United States. The applicant responded by submitting some, but not all, of the requested documentation.

On March 2, 2006, the director issued a Notice of Intent to Deny (NOID). The director found that the applicant had been convicted of possession of a narcotic or controlled substance under California Health and Safety Code § 11350(a) and of defacing public property under Los Angeles Municipal Code § 41.14. The director noted that the drug offense was originally charged and convicted as a felony, and that it appeared the applicant might have other convictions. The director stated that U.S. Citizenship and Immigration Services (USCIS) looks to the original conviction and that vacating a conviction to avoid immigration consequences does not alleviate the conviction. Citing case law, the director indicated that no effect is given in immigration proceedings to an action which purports to expunge, dismiss, cancel, vacate, or otherwise remove a guilty plea or other record of guilt or conviction. The director also noted the RFE of March 8, 2005, in which the applicant was asked to provide final court dispositions for four additional arrests. The director stated that the applicant had not submitted the requested documentation, which was necessary to adjudicate the application.

The applicant responded to the NOID, but on April 17, 2006 the director issued a decision denying the application. The director determined that the applicant's response to the NOID failed to overcome the grounds for denial.

Counsel filed a timely appeal and has submitted additional documentation which addresses the full range of the applicant's criminal record in California. Counsel makes a persuasive argument – based on applicable federal, state, and local law, court records, and a criminal history from the California Department of Justice – that the applicant stands convicted of a single misdemeanor offense under California state law, and for the purposes of federal immigration law. Thus, the applicant is not ineligible for LIFE legalization based on his criminal record.

On May 21, 2009, the Acting Chief, AAO, sent a letter to the applicant, with a copy to counsel, advising that an alien applying for permanent resident status under the LIFE Act must be in compliance with the registration requirement of the Military Selective Service Act (MSSA). The record indicates that the applicant was required to register under the MSSA.² The applicant was requested to submit documentary evidence that he registered under the MSSA.

The applicant replied on June 2, 2009, by submitting a photocopied postal receipt showing that on May 26, 2009 he had purchased a 44-cent Purple Heart PSA stamp and a 54-cent Seabiscuit envelope. The applicant wrote a note on the photocopied receipt stating that "I sent my Selective

² The MSSA, codified at 50 U.S.C. App. 451, et seq., requires all male citizens and other male residents of the United States between the ages of 18 and 26 (excluding aliens in lawful nonimmigrant status) to register with the Selective Service System. See section 3 of the MSSA, 50 U.S.C. App. 453.

Military Service proof.” It is unclear to what the applicant is referring, however, since the only items submitted in the envelope on June 2, 2009 were the postal receipt and a copy of the AAO’s letter of May 21, 2009, and there is no other documentation in the record showing that the applicant registered under the MSSA.

The applicant bears the burden of proof in this proceeding. *See* 8 C.F.R. § 245a.12(e). Since the applicant has provided no evidence that he registered under the Military Selective Service Act, the AAO concludes that he has not established his eligibility for permanent resident status in accordance with section 1101(c)(2)(D)(iv) of the LIFE Act.

Accordingly, the appeal will be dismissed and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.